



EX PARTE OR LATE FILED

RECEIVED

SEP 28 1999

FCC MAIL ROOM

VIA OVERNIGHT DELIVERY

September 27, 1999

Magalie Roman Salas
Office of the Secretary
Federal Communications Commission
445 Twelfth Street, SW; TW-A325
Washington, D.C. 20554

Re: Correction to the Joint Comments of Cornerstone, et. al. in Notice of Proposed Rulemaking and Notice of Inquiry in WT Docket No. 99-217, and Third Further Notice of Proposed Rulemaking in CC Docket No. 96-98

Dear Ms. Salas:

On August 27, 1999, Cornerstone Properties, Crescent Real Estate, Duke-Weeks Realty, Hines Interests Limited Partnership, Legacy Partners, The Lurie Company, Metropolitan Life Insurance Company, Prentiss Properties, Rudin Management Company, Shorenstein Company, Spieker Properties, and TrizecHahn Office Properties filed Joint Comments in the above referenced matter.

Please note the following correction to a typographical error in the second sentence of Paragraph 2 on page 1 of those comments, which should read: "...encompassing over 500 million square feet of tenant space."

Thank you for your assistance in this matter.

Sincerely,

Andrew H. Montroll
Assistant General Counsel



Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

RECEIVED

SEP 28 1999

FCC MAIL ROOM

In the Matter of

Promotion of Competitive Networks
in Local Telecommunications

WT Docket No. 99-217

Wireless Communications Association
International, Inc. Petition for Rulemaking
To Amend Section 1.4000 of the
Commission's Rules to Preempt
Restrictions on Subscriber Premises
Reception or Transmission Antennas
Designed to Provide Fixed Wireless
Services

Cellular Telecommunications Industry
Association Petition for Rule Making and
Amendment of the Commission's Rules
To Preempt State and Local Imposition of
Discriminatory And/Or Excessive Taxes
And Assessments

Implementation of the Local Competition
Provisions in the Telecommunications
Act of 1996

CC Docket No. 96-98

JOINT REPLY COMMENTS OF:

**CORNERSTONE PROPERTIES
CRESCENT REAL ESTATE
DUKE-WEEKS REALTY
HINES INTERESTS LIMITED PARTNERSHIP
LEGACY PARTNERS
THE LURIE COMPANY
METROPOLITAN LIFE INSURANCE COMPANY
PRENTISS PROPERTIES
RUDIN MANAGEMENT COMPANY
SHORENSTEIN COMPANY
SPIEKER PROPERTIES
TRIZECHAHN OFFICE PROPERTIES**

Dated September 27, 1999

TABLE OF CONTENTS

INTRODUCTION	1
DISCUSSION	2
I. No Tenants or Tenant Organizations Submitted Comments, Strongly Indicating that the Level of Telecommunications Competition in Multi- Tenant Buildings is Not a Concern to Tenants of those Buildings.....	2
II. The Commission's Goal should be to Ensure that Tenants have Access to Competitive TSPs, Not that Every TSP has Mandated Access to Any Building It May Choose to Serve	2
III. Regulations are Not Appropriate When Several TSPs State that they are Experiencing No Difficulty in Executing Agreements with Building Owners	4
IV. The Commission should Not Grant Competitive TSPs the same Rights that ILECs Enjoyed in a Monopolistic Environment, Rather, It should Require all TSPs, Including the ILECs, to Operate Within the Competitive Marketplace.....	5
V. The Arguments Made by TSPs that Mandatory Access will Accelerate the Development of Competition are Flawed.....	7
A. Mandatory Access Rights will not Speed the Agreement Negotiation Process.....	7
B. As Demonstrated in Comments filed by TSPs, the Mandatory Access Laws in Texas have not been Effective.....	8
VI. The Commission Should Promote Competition in Multi-tenant Buildings by Allowing Building Owners to Manage the Use of the Telecommunications Spaces in Their Buildings, not by Attempting to Centrally Regulate Hundreds of Thousands of Relationships between TSPs and Building Owners.....	9
CONCLUSION	10

INTRODUCTION

Cornerstone Properties, Crescent Real Estate, Duke-Weeks Realty, Hines Interests Limited Partnership, Legacy Partners, The Lurie Company, Metropolitan Life Insurance Company, Prentiss Properties, Rudin Management Company, Shorenstein Company, Spieker Properties, and TrizecHahn Office Properties (collectively referred to herein as the “Joint Commenters”) hereby submit Joint Reply Comments in response to comments filed by other parties with respect to the Notice of Proposed Rulemaking and Notice of Inquiry in WT Docket No. 99-217, and Third Further Notice of Proposed Rulemaking in CC Docket No. 96-98 (“Notice”).

We submitted initial comments, along with a *Technical Report*, in which we demonstrate that building owners are actively and successfully bringing competition to their tenants without Commission regulation. We also show that regulating building owners (by granting mandatory access rights to telecommunications service providers (“TSPs”), for example) will not advance, but may in fact stifle, competition. Instead, we propose that the best way for the Commission to promote competition in multi-tenant buildings, given the uniqueness of each building, space limitations, and other related factors, is to allow building owners to manage the use of telecommunications spaces and to choose among several options for delivering competitive services to tenants. None of the initial comments from the TSP industry dissuade us that the surest path to effective local competition is allowing the marketplace to continue its vigorous development. In response to comments filed by the TSPs, and in further support of our initial comments, we offer the following reply comments.

DISCUSSION

I. No Tenants or Tenant Organizations Submitted Comments, Strongly Indicating that the Level of Telecommunications Competition in Multi-Tenant Buildings is Not a Concern to Tenants of those Buildings

The Commission specifically asked all interested parties, including customers (i.e. tenants), to provide evidence of their experiences regarding the provision of competitive telecommunications services in multi-tenant buildings. (See Notice ¶ 31.) Given this invitation, one would expect that if systemic problems exist, tenant organizations or individual tenants would respond as they did in the recent proceeding relating to use of TV satellite dishes by tenants. (See generally Second Report and Order, CS Docket No. 96-83 (Oct. 14, 1999).) While numerous TSPs attempted to show that tenants are being denied access to competitive services, it does not appear that any tenants or bona fide tenant organizations responded to the Commission's request. The apparent lack of participation by tenants in this proceeding strongly indicates that the current level and pace of development of telecommunications competition in multi-tenant buildings is satisfactory and is meeting tenants' needs. Since telecommunications customers are not asking for federal intervention at this time, there is no need to regulate building owners.

II. The Commission's Goal should be to Ensure that Tenants have Access to Competitive TSPs, Not that Every TSP has Mandated Access to Any Building It May Choose to Serve

All parties filing comments to the Notice are in general agreement that tenants should have access to competitive telecommunications services. In their filings, many TSPs contend that meaningful competition can not exist without each individual TSP having a mandated right to serve every multi-tenant building they choose to serve. This "definition" of competition, however, does not match the aims of the 1996 Act, only

serves to promote the self-interests of individual TSPs, and simply does not make sense, especially when there are so many TSPs vying for access to the same buildings.¹

In any industry, meaningful competition that meets consumer needs can be realized through competition among a relatively small number of businesses. For example, there are hundreds of grocery stores in the country. As a practical matter, however, the average consumer has access to only a handful of different stores—yet in most communities, vibrant and meaningful grocery competition exists.

In their comments, competitive TSPs measure telecommunications competition by the success of their individual business plans. In making these arguments, TSPs are saying that meaningful competition equals an unlimited choice of *TSPs*. For example, WinStar, despite having gained access to nearly 6,000 buildings, argues that telecommunications competition will suffer unless *WinStar* gains mandated access to over 50,000 additional buildings. WinStar, like other competitive TSPs, forgets that many of the hundreds of other TSPs in the marketplace can bring—and are bringing—similar competitive services to multi-tenant buildings. It is tenants' choice of *services*, not of TSPs, that really matters, and in no other industry is unlimited choice a reality.

Consider the traditional definition of “competition,” as defined by *Webster's Collegiate Dictionary*, for example:

A contest between two rivals; the effort of two or more parties acting independently to secure the business of a third party by offering the most favorable terms. (*Webster's Ninth New Collegiate Dictionary*, s.v. “competition.”)

¹ It is not practical for a large number of TSPs to install competing facilities in multi-tenant buildings due to economic constraints and space limitations. The suggestion of some TSP commenters that building owners simply drill more holes through their floors demonstrates their lack of understanding of the problem.

Scores of building owners filed comments demonstrating that they are already meeting or beating the “plain meaning” definition of competition in their buildings. One or more competing TSPs are serving many of their buildings and this number is growing rapidly. As an industry, competitive TSPs are having great success in bringing competitive services to tenants of multi-tenant buildings.

III. Regulations are Not Appropriate When Several TSPs State that they are Experiencing No Difficulty in Executing Agreements with Building Owners

The Commission asked TSPs to describe their experiences in gaining access to multi-tenant buildings. The range of responses is great. Some complain that building owners charge excessive fees, while others claim that owners impose unreasonable demands. Still other TSPs complain that negotiations with owners take too long.² Curiously, even TSPs who have not yet begun constructing their networks or seeking access to buildings—and therefore have no first-hand experience whatsoever—joined the chorus. The Commission should note, however, that some TSPs, such as Allied Riser Communications Corporation and Optel, filed comments stating that they are *not* experiencing any difficulties with owners in gaining access to multi-tenant buildings.

This wide range of responses begs the question: Why are some TSPs easily entering buildings while others claim to be facing insurmountable obstacles? The TSPs that claim difficulties blame building owners. Clearly, however, each TSP has its own negotiation style, requirements, and reputation for service quality, and the market is rewarding those that are successfully meeting consumer demands. It is not the

² It is impossible to respond to the TSPs’ allegations because they are all presented without any detail or background information. Nonetheless, the tens of thousands of success stories far overwhelm any anecdotal “evidence” presented by the TSPs.

Commission's role, in the name of competition, to provide regulatory aid to less responsive or less competitive TSPs.

IV. The Commission should Not Grant Competitive TSPs the same Rights that ILECs Enjoyed in a Monopolistic Environment, Rather, It should Require all TSPs, Including the ILECs, to Operate Within the Competitive Marketplace

Many TSP comments share the theme that TSPs should be granted the same access rights in multi-tenant buildings that are enjoyed by ILECs. They argue that because building owners have voluntarily allowed ILECs into buildings without formal access agreements and without charging fees, then all competitive TSPs should be granted similar access rights. These arguments, however, are fundamentally flawed.

For over one hundred years, legislators and regulators granted monopoly rights to the ILECs. While it is not necessary for tenants to have access to telecommunications services from multiple TSPs, they do require access to such services from at least one provider. Indeed, many state and/or local building codes require that tenants have access to phone service. Accordingly, multi-tenant building owners had no choice but to allow ILECs, as the sole providers of telephone services, into their buildings. In a monopolistic environment, access agreements or fees for ILECs were virtually unheard of. As discussed in our initial comments, however, building owners' attempts to treat all TSPs equally in today's competitive world by requiring agreements or fees from the ILECs are complicated and often thwarted by the ILECs' abuse of their significant market power. For TSPs to suggest that multi-tenant building owners choose to treat ILECs in this manner is plain nonsense.

Competitive TSPs argue in their comments that they should be treated in a nondiscriminatory manner with respect to ILECs—but they mean this only in so far that

they too should enjoy building access without paying any fees signing access agreements with building owners. To give TSPs the same benefits and privileges that ILECs have traditionally enjoyed, however, ignores the historic differences between ILECs and competitive TSPs, which do not shoulder the same duties and burdens as ILECs, and are already enjoying rights that ILECs do not. For example, competitive TSPs are not subject to ILEC tariffs and do not provide universal services to all tenants in all buildings, including the less profitable ones. Furthermore, competitive TSPs are demanding—and often receiving—from building owners rights not granted to ILECs, such as the right to provide more than just voice-grade services, the right to establish a long-term presence in the building (in the absence of an access agreement, an ILEC's rights in a building are essentially at the will of the owner), and the right to place equipment on the rooftop.

Given both the ILECs' historic monopoly and current market power, as well as the broader scope of rights enjoyed by competitive TSPs, it does not make sense to use today's parameters of ILEC access to multi-tenant buildings as guidelines for access by all other competitors. To do so would be to commit the folly of establishing monopoly rules and regulations to govern a competitive marketplace. Building owners should not be saddled with the concessions of the monopolistic world granted by regulators and enjoyed by ILECs for so many years.

The way to achieve parity in the treatment of competitive TSPs and ILECs is not to grant competitive TSPs some of the traditional rights (but not the responsibilities) enjoyed by ILECs, but to change the traditional position of the ILECs into that of the other TSPs, as the Commission has been attempting to do over time. Like competitive

TSPs, ILECs should be required to compete on a level playing field—to negotiate access rights with multi-tenant building owners on an equal footing with their competitors.

V. The Arguments Made by TSPs that Mandatory Access will Accelerate the Development of Competition are Flawed

The Joint Commenters demonstrate in our initial comments that mandatory access is neither necessary nor a workable solution. Specifically, we show that mandatory access rights ultimately will be detrimental to competition due to physical and economic limitations on the number of TSPs that can be accommodated in a multi-tenant building. We also demonstrate that mandatory access will create a “digital land rush” that will reduce rather than increase tenants’ choice of services and providers. Mandatory access regulations will place no one in a position to ensure that from among the large number of competitors, the ones best suited to meet current and future tenant needs are those allowed to install facilities in limited telecommunications spaces. TSPs argue, however, that mandatory access rules are necessary to shorten the time that it takes to negotiate access agreements. Many TSPs also ask the Commission to model national mandatory access regulations after the existing mandatory access laws in Texas. Both positions, however, are flawed.

A. Mandatory Access Rights will not Speed the Agreement Negotiation Process

A number of TSPs argue in their comments to the Notice that mandatory access rights are necessary to decrease the time it takes to negotiate access agreements with building owners. Mandatory access rules, however, will not eliminate the need for agreements between owners and TSPs. While such regulations may tip the balance of power in negotiations in favor of the TSPs, they would not be designed to circumvent owners’ private property rights to protect their property and their other building tenants.

As WinStar makes clear in its filings, even with mandatory access, “owners still would be able to negotiate the terms and conditions—on a nondiscriminatory basis—by which competitors gain access.” (WinStar Comments dated Aug. 27, 1999 at 26.) With or without mandatory access, all of the terms and conditions contained in an access agreement would still be subject to negotiation between the owner and the TSP. Thus, mandatory access rules would have little impact, if any, upon the length of time it takes to negotiate an access agreement.

B. As Demonstrated in Comments filed by TSPs, the Mandatory Access Laws in Texas have not been Effective

Many TSPs ask the Commission to use the mandatory access laws currently in effect in Texas as a model for national mandatory access regulations. There are several problems, however, in following the Texas law. For example, the Texas mandatory access statute was enacted in 1995, before Congress passed the Telecommunications Act of 1996. The Texas law was thus created in an environment where only a few competitive TSPs existed. It is one thing to mandate access to a few competitors; it is quite another thing to mandate access to hundreds of competitors.

There is also no indication that the level of competition in multi-tenant buildings in states without mandatory access laws is any lower than the level of competition in Texas. This is because building owners throughout the country, not just in Texas, are motivated to make competitive services available to their tenants.

Finally, even the anecdotal evidence included in comments presented by TSPs demonstrates that the Texas mandatory access laws have not had a meaningful impact. For example, the Association for Local Telecommunications Services (“ALTS”) offers 78 anonymous examples of alleged access problems that TSPs have experienced around

the country. Twelve of those examples (or 15%) involve access issues in Texas. These data do not support the arguments of some TSPs that mandatory access rules represent a solution to the “problem” of access to multi-tenant buildings. As in every other state, building owners and TSPs are negotiating in good faith to bring competitive services to building tenants on a non-discriminatory basis.

VI. The Commission Should Promote Competition in Multi-tenant Buildings by Allowing Building Owners to Manage the Use of the Telecommunications Spaces in Their Buildings, not by Attempting to Centrally Regulate Hundreds of Thousands of Relationships between TSPs and Building Owners

Some TSPs ask the Commission to impose new regulations on building owners and, more particularly, to oversee the relationships between TSPs and building owners. With hundreds of competitive TSPs seeking access to over 750,000 buildings, the Commission could be overwhelmed if it attempts to arbitrate such a huge number of negotiations and potential disputes. Indeed, as the Joint Commenters demonstrate in our initial filing, competition in multi-tenant buildings is flourishing. While individual TSPs may be frustrated at the pace at which they are entering buildings, the competitive TSP industry as a whole is enjoying tremendous success.

Rather than imposing new regulations on building owners, the Commission can best promote competition in multi-tenant buildings by allowing owners to manage the use of telecommunications spaces and to choose among the following options for delivering competitive services to tenants:

1. Building owners should have the right to allow TSPs to install their own facilities in the building under market-negotiated terms and conditions. TSPs should not, however, have a mandated right of access to the building. Such mandatory access rights would deprive owners of the ability to manage building spaces in an efficient and appropriate manner and are likely to result in less, not more competition.

2. Building owners should have the right to insist that any TSP (including the ILEC) that installs wiring in the building should be required to make such wiring available to other TSPs. Service-based competition will allow owners to attract a larger number of TSPs to the building because space limitations will not be an issue.
3. Building owners should also have the right to install or manage their own facilities in the building and require all TSPs (including the ILEC) to use those facilities upon market-negotiated terms and conditions for providing services to tenants.

In this way, building owners will be able to continue managing the delivery of competitive telecommunications services in their buildings to ensure that their tenants' needs are met over the long term.

CONCLUSION

The Joint Commenters respectfully ask the Commission to recognize the efforts and the role of building owners in bringing telecommunications competition to tenants of multi-unit buildings.

Dated September 27, 1999

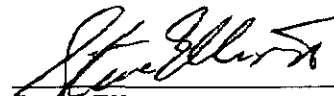
 /s/
Cornerstone Properties,
Crescent Real Estate,
Duke-Weeks Realty,
Hines Interests Limited Partnership,
Legacy Partners,
The Lurie Company,
Metropolitan Life Insurance Company,
Prentiss Properties,
Rudin Management Company,
Shorenstein Company,
Spieker Properties, and
TrizecHahn Office Properties

c/o Riser Management Systems
200 Church Street
P.O. Box 1264
Burlington, Vermont 05401
(802) 860-5137

These Reply Comments are jointly submitted to the Federal Communications Commission by Cornerstone Properties Inc. along with the other participants in Building Owners for Telecommunications Competition in WT Docket No. 99-217 and CC Docket No. 96-98.

CORNERSTONE PROPERTIES INC.

By


Steve Elliott
Vice President

Date

9/27/99

These Reply Comments are jointly submitted to the Federal Communications Commission by Crescent Real Estate Equities, Ltd. along with the other participants in Building Owners for Telecommunications Competition in WT Docket No. 99-217 and CC Docket No. 96-98.

CRESCENT REAL ESTATE EQUITIES, LTD.,
A Delaware corporation

By


Howard W. Lovett
Vice President, Corporate Leasing

Date

September 24, 1999

These Reply Comments are jointly submitted to the Federal Communications Commission by Duke-Weeks Realty Corporation along with the other participants in Building Owners for Telecommunications Competition in WT Docket No. 99-217 and CC Docket No. 96-98.

DUKE-WEEKS REALTY CORPORATION

By



Thomas L. Hefner
Chairman of the Board and
Chief Executive Officer

Date

9-27-99

These Reply Comments are jointly submitted to the Federal Communications Commission by Hines Interests Limited Partnership along with the other participants in Building Owners for Telecommunications Competition in WT Docket No. 99-217 and CC Docket No. 96-98.

Hines Interests Limited Partnership

By



Steven W. Peterson
Vice President


Date

9/24/99

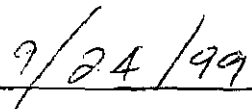
These Reply Comments are jointly submitted to the Federal Communications Commission by Legacy Partners Commercial, Inc., along with the other participants in Building Owners for Telecommunications Competition in WT Docket No. 99-217 and CC Docket No. 96-98.

LEGACY PARTNERS COMMERCIAL, INC.

By


Dale Tate, RPA, Vice President –
Operations

Date


9/24/99

These Reply Comments are jointly submitted to the Federal Communications Commission by The Lurie Company along with the other participants in Building Owners for Telecommunications Competition in WT Docket No. 99-217 and CC Docket No. 96-98.

The Lurie Company

By


H. Michael Kurzman,
Executive Vice-President

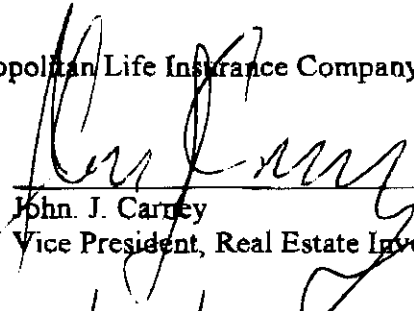
Date

9/23/99

These Reply Comments are jointly submitted to the Federal Communications Commission by Metropolitan Life Insurance Company along with the other participants in Building Owners for Telecommunications Competition in WT Docket No. 99-217 and CC Docket No. 96-98.

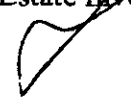
Metropolitan Life Insurance Company 231

By


John J. Carney


Vice President, Real Estate Investments

Date

9/24/99 

These Reply Comments are jointly submitted to the Federal Communications Commission by Prentiss Properties Trust along with the other participants in Building Owners for Telecommunications Competition in WT Docket No. 99-217 and CC Docket No. 96-98.

Prentiss Properties Trust,
a Maryland real estate investment trust

By 
Name Kevan Dilbeck
Title Senior Vice President and
General Counsel

Date September 24, 1999

These Reply Comments are jointly submitted to the Federal Communications Commission by Rudin Management Company, Inc., along with the other participants in Building Owners for Telecommunications Competition in WT Docket No. 99-217 and CC Docket No. 96-98.

Rudin Management Company, Inc.

By


John J. Gilbert, III
Executive Vice President and
Chief Operating Officer

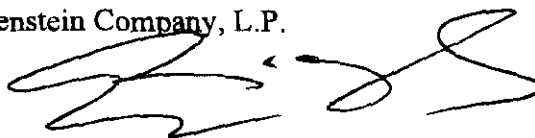
Date

9/27/99

These Reply Comments are jointly submitted to the Federal Communications Commission by Shorenstein Company, L.P. along with the other participants in Building Owners for Telecommunications Competition in WT Docket No. 99-217 and CC Docket No. 96-98.

Shorenstein Company, L.P.

By

A handwritten signature in black ink, appearing to read 'Eric Yopes', written over a horizontal line.

Eric Yopes, Executive Vice President

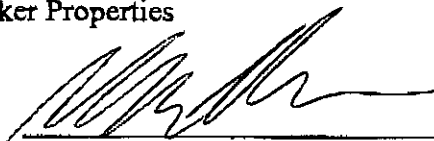
Date

27 September 1999

These Reply Comments are jointly submitted to the Federal Communications Commission by Spieker Properties along with the other participants in Building Owners for Telecommunications Competition in WT Docket No. 99-217 and CC Docket No. 96-98.

Spieker Properties

By



Meredith Richardson

Director of Business Services

Date

September 23, 1999

These Reply Comments are jointly submitted to the Federal Communications Commission by TrizecHahn Office Properties Inc., along with the other participants in Building Owners for Telecommunications Competition in WT Docket No. 99-217 and CC Docket No. 96-98.

TRIZECHAHN OFFICE PROPERTIES INC.

By 

Date 9/27/99